

In the Matter of Merchant Mariner's Document Z-648745-D7 and all other Seaman Documents
Issued to: SHERMAN McGRUDER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1109

SHERMAN McGRUDER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1

By order dated 24 October 1958, an Examiner of the United States Coast Guard at New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. The four specifications found proved allege that while serving as wiper on board the United States SS AFRICAN PILOT under authority of the document above described, on about 27 September 1958, Appellant wrongfully had intoxicating liquor in his possession; he assaulted

and battered the Master; he assaulted and battered the Chief Mate; he wrongfully threatened the Chief Mate with bodily harm.

At the hearing, Appellant entered a plea of guilty to the first specification and not guilty to the other three. The Investigating Officer introduced in evidence the testimony of the Master and Chief Mate. A messman who saw Appellant drinking whisky on the date in question testified as Appellant's only witness. Appellant chose not to testify stating that he did not remember what had happen.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and four specifications had been proved. The first specification was proved by plea. An order was entered suspending all documents, issued to Appellant, for a period of three months outright and three months on twelve months' probation.

The decision was served on 24 October 1958. Appeal was timely filed on 30 October.

FINDINGS OF FACT

On 27 September 1958, Appellant was serving as a wiper on board the United States SS AFRICAN PILOT and acting under authority of his Merchant Mariner's Document No. Z-648745-D7 while the ship was at sea.

On this date, Appellant was drinking his whisky in the mess hall. Later, the Master saw Appellant in a drunken condition on the bridge and told him to go below. The Master and Chief Mate then went to search Appellant's room for intoxicants. On the table, there was a bottle with herbs and liquid in it. The Master ordered the Mate to throw the bottle overboard. When the Mate picked up the bottle, Appellant told the Mate that if he threw the bottle over the side he would go with it. Appellant then grabbed the Mate by the shoulders. The Master threw the bottle over the side while the Mate twisted out of Appellant's grasp.

The Master returned to Appellant's room to search his locker. When Appellant was informed of this, he grabbed the Master from behind with both arms around his neck. The Master broke free with the Mate's assistance and handcuffed Appellant to a bunk stanchion in his room. An hour and a half later, Appellant had sobered. He was quiet and apologized to the Master. Appellant caused no further trouble on the voyage.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the specifications were not proved by the evidence and the order imposed is an excessive deprivation of appellant's right to make a living in view of his prior clear record.

Appellant did not actually strike the Master or Chief Mate.

OPINION

The above findings are in accord with those of the Examiner and, with respect to the last three specifications, are based on the uncontradicted testimony of the Master and Chief Mate which the Examiner said he accepted as truth of the matter. Hence, this testimony constitutes substantial evidence. The findings based on the testimony are conclusive proof of the allegations contained in the three specifications.

As to the first specification, Appellant's plea of guilty is adequate to indicate that his contention as to the lack of evidence is completely without merit. Although no evidence was necessary, the messman testified that Appellant was drinking his whiskey in the mess hall.

The Examiner imposed a comparatively mild order of suspension because Appellant did not

display any vicious tendencies. He did not strike either officer or use a weapon.

I think that the suspension ordered was extremely lenient and it will not be modified. As stated by the Examiner, Appellant committed a very serious offense when he challenged the supreme authority of the Master at sea by holding him under temporary physical restraint. Intoxication is no excuse for this or other offenses.

ORDER

The order of the Examiner dated at New York, New York, on 24 October 1958, is ~~REVERSED~~ **AFFIRMED**.

A.C. Richmond
Vice Admiral, U.S. Coast Guard
Commandant

Dated at Washington, D.C., this 9th day of September, 1959.